

Telmex USA, L.L.C. – Application for Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended, to Offer Global Facilities-Based International Switched and Private Line Services and Resold Non-Interconnected Private Line Services Between the U.S. and Foreign Points

Filed March 12, 2003

ATTACHMENT 3 TO APPLICATION – PUBLIC INTEREST STATEMENT

The streamlined grant of this Application will serve the public interest, convenience and necessity by promoting the Commission’s procompetitive goals. With the ability to obtain and construct its own facilities, including the ability to construct additional border crossing points, Telmex USA will be able to achieve important network efficiencies beyond those that are possible under its present switched resale authorization, enabling it to better serve U.S. customers. Indeed, these network efficiencies will become all the more critical once the existing settlements regime is eliminated, as Telmex has requested in Mexico.¹ Moreover, this Application raises no new or novel questions of law, and well-established Commission precedent demonstrates that a grant is amply warranted under the Commission’s open entry policy.

Through its commitments made in the World Trade Organization (“WTO”) Basic Telecommunications Agreement (“WTO Agreement”), the United States has adopted an unambiguous “open entry” policy under which the Commission presumes that entry by a foreign carrier from a WTO Member country will advance the public interest. As the Commission concluded in the *Foreign Carrier Participation Order*, open entry stimulates competition in the U.S. market for international telecommunications services, thereby creating incentives for carriers

¹ See, e.g., Public Notice, *Petition for Waiver of the International Settlements Policy for a Change in Accounting Rate for International Message Telephone Services with Teléfonos de México, S.A. de C.V.*, 17 FCC Rcd 8273 (2002), and related proceedings.

to develop innovative new services as well as to offer existing services at lower prices.² Indeed, in adopting the open entry policy currently in effect, the Commission concluded that, “discriminating among foreign applicants based on the quality of their WTO commitment or the extent of the implementation of their commitment could raise serious GATS concerns.”³ In implementing the U.S. commitments, therefore, the Commission established a rebuttable presumption that an international Section 214 application filed by an entity from a WTO Member country does not raise competitive concerns, unless granting the application would pose a “very high risk to competition” in a U.S. market that cannot be addressed by existing conditions the Commission places on U.S. international carriers considered dominant under its rules.⁴

Telmex USA poses no such risk to competition in any U.S. market, much less the “very high risk to competition” required to rebut the Commission’s unambiguous open entry policy. In fact, the Commission repeatedly has recognized that Telmex-affiliated entities pose no such risk. The Commission granted Telmex/Sprint Communications, L.L.C. Section 214 authority to provide resold switched international telecommunications services in 1997 and subsequently granted authority to transfer control of that entity to a wholly-owned subsidiary of Telmex.⁵ Only five months ago, the Commission approved a proposed 40 percent indirect investment by Telmex in XO, a facilities-based carrier, finding that, “[the Commission’s] dominant carrier safeguards will protect sufficiently against any potential harms to U.S.

² *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, ¶ 10 (1997) (“*Foreign Carrier Participation Order*”).

³ *Foreign Carrier Participation Order*, 12 FCC Rcd 23891, ¶ 40.

⁴ *Id.* at ¶¶ 50-52.

⁵ See Attachment 1, n.6.

customers on the routes where XO will be affiliated with the dominant carrier on the foreign end of the route.”⁶ There is no basis for reaching a different conclusion here.

To be sure, Telmex’s opponents have repeatedly and unsuccessfully contested applications by Telmex-related entities in the past on settlement rate and Mexican competition grounds. Even assuming Telmex’s opponents were to raise those concerns again here, such arguments would not justify denial of this Application. To the contrary, in the recent *XO* decision, the Commission flatly rejected such arguments, making clear that “the WTO dispute resolution process provides the proper forum for redress” of allegations relating to a WTO Member country’s implementation of its WTO commitments.⁷ Thus, while such allegations are pending today at the WTO,⁸ Commission precedent requires that they be resolved at the WTO, not by the FCC.

In light of the clear public interest benefits that would accrue to U.S. consumers, the Commission should grant Telmex USA Section 214 authority to provide facilities-based switched and private line services and resold non-interconnected private line services to all foreign points authorized by the Commission’s rules on a streamlined basis. Such action is mandated by the

⁶ *XO Communications, Inc.*, 17 FCC Rcd 19212, at ¶ 31. On October 21, 2002, XO advised the Commission that the proposed transaction would not be consummated. See Letter from Brad E. Mutschelknaus and Joan M. Griffin, Counsel for XO Communications, to Marlene H. Dortch, Secretary, FCC, IB Docket No. 02-50 (filed Oct. 21, 2002).

⁷ *XO Communications, Inc.*, 17 FCC Rcd 19212, at ¶ 35 (“In adopting its policies on foreign carrier participation in the U.S. telecommunications market, the Commission expressly rejected arguments that it should tie foreign carrier entry requirements to the extent to which a foreign country has implemented its market opening commitments under the WTO Basic Telecoms Agreement. Moreover, the USTR has the ability to enforce a WTO Member country’s commitments through the WTO dispute resolution process. Hence, the WTO dispute resolution process provides the proper forum for redress.”) (footnotes omitted); see also *Foreign Carrier Participation Order*, 12 FCC Rcd 23891, ¶ 39.

⁸ See *Mexico – Measures Affecting Telecommunications Services*, WTO Dispute Settlement Body Proceeding WT/DS204. As set forth in the Commission’s decision in *XO Communications, Inc.*, Memorandum Opinion and Order and Authorization, 17 FCC Rcd 19212, at ¶ 35 and n.106 (Int. Bur. 2002), the WTO established a dispute resolution panel on April 17, 2002, at the request of the United States, to resolve the United States’ claims that Mexico’s WTO commitments require cost-based settlement rates and international simple resale on the U.S.-Mexico route. The proceeding is pending.

United States' WTO commitments and is amply warranted because Telmex USA's entry poses no risk to competition in any domestic or international U.S. telecommunications market.

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